

# SENATE . . . . . No. 1394

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Frederick E. Berry (BY REQUEST)**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the public records law "the Massachusetts sunshine bill".

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stefano Picciotto	418 Lafayette Street Salem, MA 01970
Melita Picciotto	418 Lafayette Street Salem, MA 01970

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE PUBLIC RECORDS LAW "THE MASSACHUSETTS SUNSHINE BILL".

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 66 is hereby repealed and is replaced by the following language:

## CHAPTER 66

### PUBLIC RECORDS

#### THE MASSACHUSETTS SUNSHINE BILL

66 § 1 General state policy on public records.

66 § 2 Definitions.

66 § 3 Custodial requirements; maintenance, preservation, and retention of public records.

66 § 4 Inspection and copying of records; photographing public records; fees; exemptions.

66 § 5 General exemptions from inspection or copying of public records.

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15 66 § 10 Copyright of data processing software created by governmental agencies; sale price and  
16 licensing fee.

17 66 § 11 Registration by federal employer's registration number.

18 66 § 12 Violation of chapter; penalties.

19 66 § 13 Protection of victims of crimes or accidents.

20 66 § 14 Accelerated hearing; immediate compliance.

21 66 § 15 Attorney's fees.

22 66 § 16 Legislative review of exemptions from public meeting and public records requirements.

23 **66 § 1 General state policy on public records**

24 (1) It is the policy of this state that all state, county, and municipal records are open for personal  
25 inspection and copying by any person. Providing access to public records is a duty of each  
26 agency.

27 (2)(a) Automation of public records must not erode the right of access to those records. As each  
28 agency increases its use of and dependence on electronic recordkeeping, each agency must

provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.

(b) When designing or acquiring an electronic recordkeeping system, an agency must consider whether such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(c) An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records that are online or stored in an electronic recordkeeping system used by the agency.

(d) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(e) Providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

(f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a

medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with c. 66 § 4(4).

(3) If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of c. 66 § 4.

## **66 § 2 Definitions**

As used in this chapter, the term:

(1) "Actual cost of duplication" means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime.

2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in c. 66 § 5(2)(h).

3. The time, date, and location of the incident and of the arrest.

4. The crime charged.

5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in c. 66 § 5(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of c. 66 § 4(1) until released at trial if it is found that the release of such information would:

a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and

b. Impair the ability of a state attorney to locate or prosecute a codefendant.

6. Informations and indictments except as ordered by the court, a grand juror, reporter, stenographer, interpreter, or officer of the court shall not disclose that an indictment for a felony has been found against a person not in custody or under recognizance, except by issuing or executing process on the indictment, until the person has been arrested.

(a) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of the statute of limitation.

(4) "Criminal justice agency" means:

(a) Any law enforcement agency, court, or prosecutor;

(b) Any other agency charged by law with criminal law enforcement duties;

(c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the

Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or

(d) The Department of Corrections.

(5) "Custodian of public records" means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

(6) "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(7) "Duplicated copies" means new copies produced by the process of reproducing an image or images from an original to a final substrate through the electrophotographic, xerographic, laser, or offset process or any combination of these processes, by which an operator can make more than one copy without rehandling the original.

(8) "Exemption" means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of c. 66 § 4(1).

(9) "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training.

(10) "Paratransit" means those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a



time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.

(11) "Proprietary software" means data processing software that is protected by copyright or trade secret laws.

(12) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(13) "Redact" means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

(14) "Sensitive," for purposes of defining agency-produced software that is sensitive, means only those portions of data processing software, including the specifications and documentation, which are used to:

(a) Collect, process, store, and retrieve information that is exempt from c. 66 § 4(1);

(b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or

(c) Control and direct access authorizations and security measures for automated systems.

**66 § 3 Custodial requirements; maintenance, preservation, and retention of public records**

(1) Public records shall be maintained and preserved as follows:

(a) All public records should be kept in the buildings in which they are ordinarily used.

(b) Insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.

(c)1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read.

2. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of the concerned state agency, department, board, or commission; the board of county commissioners of such county; or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them.

3. Any public official who causes a record book to be copied shall attest and certify under oath that the copy is an accurate copy of the original book. The copy shall then have the force and effect of the original.

(2)(a) The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records.

(b) Each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.

(c) Each public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the division Secretary of State.

(d) The division may ascertain the condition of public records and shall give advice and assistance to public officials to solve problems related to the preservation, creation, filing, and public accessibility of public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall, subject to the availability of necessary space, staff, and other facilities for such purposes, make space available in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

(3) Agency orders that comprise final agency action and that must be indexed or listed pursuant to the Secretary of State have continuing legal significance; therefore, notwithstanding any other provision of this chapter, each agency shall permanently maintain records of such orders pursuant to the applicable rules of the Secretary of State.

(4)(a) Whoever has custody of any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be none, to the records and information management program of the Secretary of State all public records kept or received by him or her in the transaction of official business.

(b) Whoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her. Any person

unlawfully possessing public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists for failing to deliver such records.

**66 § 4 Inspection and copying of records; photographing public records; fees; exemptions**

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or

she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of c. 66 § 5(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of c. 66 § 5(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record

is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(2)(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.

(b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1).

(c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.

(3)(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.

(b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.

(d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4)(e).

(4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

(a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8<sup>1</sup>/<sub>2</sub> inches;

2. No more than an additional 5 cents for each two-sided copy; and

3. For all other copies, the actual cost of duplication of the public record.

(b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

(c) An agency may charge up to \$1 per copy for a certified copy of a public record.

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

(e)1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.

2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.



(6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.

(7) The provisions of this section are not intended to expand or limit the provisions of Mass. Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

## **66 § 5 General exemptions from inspection or copying of public records**

### **(1) AGENCY ADMINISTRATION**

(a) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from c. 66 § 4(1).

A person who has taken such an examination has the right to review his or her own completed examination.

(b)1.a. Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from c. 66 § 4(1) until such time as the agency provides notice of a

319 decision or intended decision or within 10 days after bid or proposal opening, whichever is  
320 earlier.

321 b. If an agency rejects all bids or proposals submitted in response to an invitation to bid or  
322 request for proposals and the agency concurrently provides notice of its intent to reissue the  
323 invitation to bid or request for proposals, the rejected bids or proposals remain exempt from c. 66  
324 § 4(1) until such time as the agency provides notice of a decision or intended decision  
325 concerning the reissued invitation to bid or request for proposals or until the agency withdraws  
326 the reissued invitation to bid or request for proposals. This sub-subparagraph is subject to the  
327 Public Record Law in accordance with c. 66 § 16.

328 2.a. A competitive sealed reply in response to an invitation to negotiate, is exempt from c. 66 §  
329 4(1) until such time as the agency provides notice of a decision or intended decision or until 20  
330 days after the final competitive sealed replies are all opened, whichever occurs earlier.

331 b. If an agency rejects all competitive sealed replies in response to an invitation to negotiate and  
332 concurrently provides notice of its intent to reissue the invitation to negotiate and reissues the  
333 invitation to negotiate within 90 days after the notice of intent to reissue the invitation to  
334 negotiate, the rejected replies remain exempt from c. 66 § 4(1) until such time as the agency  
335 provides notice of a decision or intended decision concerning the reissued invitation to negotiate  
336 or until the agency withdraws the reissued invitation to negotiate. A competitive sealed reply is  
337 not exempt for longer than 12 months after the initial agency notice rejecting all replies.

338 c. This subparagraph is subject to the Public Record Law in accordance with c. 66 § 16.

(c) Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from c. 66 § 4(1).

(d)1. A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from c. 66 § 4(1) until the conclusion of the litigation or adversarial administrative proceedings. For purposes of capital collateral litigation, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

2. This exemption is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

(e) Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from c. 66 § 4(1).

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret and agency-produced data processing software that is sensitive are exempt from c. 66 § 4(1) The designation of agency-produced software as sensitive shall not prohibit an agency head from sharing or exchanging such software with another public agency.

(g)1. United States Census Bureau address information, which includes maps showing structure location points, agency records verifying addresses, and agency records identifying address errors or omissions, held by an agency pursuant to the Local Update of Census Addresses Program, Title 13, United States Code, Pub. L. No. 103-430, is confidential and exempt from c. 66 § 4(1).

2. Such information may be released to another agency or governmental entity in the furtherance of its duties and responsibilities under the Local Update of Census Addresses Program.

3. An agency performing duties and responsibilities under the Local Update of Census Addresses Program shall have access to any other confidential or exempt information held by another agency if such access is necessary in order to perform its duties and responsibilities under the program.

4. This exemption is subject to the Public Record Law in accordance with c. 66 § 16.

(2) AGENCY INVESTIGATIONS

(a) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from c. 66 § 4(1).

(b) Whenever criminal intelligence information or criminal investigative information held by a non- Massachusetts criminal justice agency is available to a Massachusetts criminal justice agency only on a confidential or similarly restricted basis, the Massachusetts criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

(c)1. Active criminal intelligence information and active criminal investigative information are exempt from c. 66 § 4(1).

2.a. A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from c. 66 § 4(1) during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

b. The law enforcement agency that made the request to inspect or copy a public record shall give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active so that the request made by the law enforcement agency, the custodian's response to the request, and information that would identify whether the law enforcement agency had requested or received that public record are available to the public.

c. This exemption is remedial in nature, and it is the intent of the Legislature that the exemption be applied to requests for information received before, on, or after the effective date of this paragraph.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from c. 66 § 4(1). Any comprehensive inventory of state and local law enforcement resources compiled, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, are exempt from c. 66 § 4(1) and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, or any other governmental office that has an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing the substance of a confession of a person arrested is exempt from c. 66 § 4(1), until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(f) Any information revealing the identity of a confidential informant or a confidential source is exempt from c. 66 § 4(1).

(g)1.a. All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from c. 66 § 4(1) until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

(h). Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. When the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from c. 66 § 4(1).

(i)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from c. 66 § 4(1):

a. Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse.

b. Any information which may reveal the identity of a person who is a victim of any sexual offense.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Public Record Law in accordance with c. 66 § 16.

(i) Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from c. 66 § 4(1).

(j)1. Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from c. 66 § 4(1). Any information not otherwise held confidential or exempt from c. 66 § 4(1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from c. 66 § 4(1), upon written request by the victim, which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section.

2. a. Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct, which reveals that minor's



identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, held by a law enforcement agency, is confidential and exempt from c. 66 § 4(1) . Any governmental agency that is authorized to have access to such statements by any provision of law shall be granted such access in the furtherance of the agency's statutory duties, notwithstanding the provisions of this section.

b. A public employee or officer who has access to a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct may not willfully and knowingly disclose videotaped information that reveals the minor's identity to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense. A person who violates this provision commits a misdemeanor of the first degree, punishable as provided by law.

### (3) SECURITY

(a)1. As used in this paragraph, the term "security system plan" includes all:

a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

b. Threat assessments conducted by any agency or any private entity;

487 c. Threat response plans;

488 d. Emergency evacuation plans;

489 e. Sheltering arrangements; or

490 f. Manuals for security personnel, emergency equipment, or security training.

491 2. A security system plan or portion thereof for:

492 a. Any property owned by or leased to the state or any of its political subdivisions; or

493 b. Any privately owned or leased property held by an agency is confidential and exempt from c.

494 66 § 4(1). This exemption is remedial in nature, and it is the intent of the Legislature that this

495 exemption apply to security system plans held by an agency before, on, or after the effective date

496 of this paragraph.

497 3. Information made confidential and exempt by this paragraph may be disclosed by the

498 custodian of public records to:

499 a. The property owner or leaseholder; or

500 b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or

501 manage the consequences of any attempted or actual act of terrorism, or to prosecute those

502 persons who are responsible for such attempts or acts.

503 (b)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary,

504 and final formats, which depict the internal layout and structural elements of a building, arena,

505 stadium, water treatment facility, or other structure owned or operated by an agency are exempt

506 from c. 66 § 4(1).

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information shall maintain the exempt status of the information.

(c) Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which documents are held by an agency are exempt from c. 66 § 4(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to any such documents held by an agency before, on, or after the effective date of this act. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and

responsibilities; to the owner or owners of the structure in question or the owner's legal representative; or upon a showing of good cause before a court of competent jurisdiction. As used in this paragraph, the term:

1. "Attractions and recreation facility" means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

a. For single-performance facilities:

(I) Provides single-performance facilities; or

(II) Provides more than 10,000 permanent seats for spectators.

b. For serial-performance facilities:

(I) Provides parking spaces for more than 1,000 motor vehicles; or

(II) Provides more than 4,000 permanent seats for spectators.

2. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

548 3. "Industrial complex" means any industrial, manufacturing, processing, distribution,  
549 warehousing, or wholesale facility or plant, as well as accessory uses and structures, under  
550 common ownership which:

551 a. Provides onsite parking for more than 250 motor vehicles;

552 b. Encompasses 500,000 square feet or more of gross floor area; or

553 c. Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily  
554 serve or deal onsite with the general public.

555 4. "Retail and service development" means any retail, service, or wholesale business  
556 establishment or group of establishments which deals primarily with the general public onsite  
557 and is operated under one common property ownership, development plan, or management that:

558 a. Encompasses more than 400,000 square feet of gross floor area; or

559 b. Provides parking spaces for more than 2,500 motor vehicles.

560 5. "Office development" means any office building or park operated under common ownership,  
561 development plan, or management that encompasses 300,000 or more square feet of gross floor  
562 area.

563 6. "Hotel or motel development" means any hotel or motel development that accommodates 350  
564 or more units.

565 This exemption does not apply to comprehensive plans or site plans, or amendments thereto,  
566 which are submitted for approval or which have been approved under local land development  
567 regulations, local zoning regulations, or development-of-regional-impact review.

(4) AGENCY PERSONNEL INFORMATION

(a)1. The social security numbers of all current and former agency employees which numbers are contained in agency employment records are exempt from c. 66 § 4(1).

2. An agency that is the custodian of a social security number specified in subparagraph 1, and that is not the employing agency shall maintain the exempt status of the social security number only if the employee or the employing agency of the employee submits a written request for confidentiality to the custodial agency. However, upon a request by a commercial entity as provided in sub-subparagraph (5)(a)7.b., the custodial agency shall release the last four digits of the exempt social security number, except that a social security number provided in a lien filed with the Department of State shall be released in its entirety. This subparagraph is subject to the Public Record Law in accordance with c. 66 § 16.

(b) Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from c. 66 § 4(1). However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

(c) Any information revealing undercover personnel of any criminal justice agency is exempt from c. 66 § 4(1).

(d)1.a. The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of

the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from c. 66 § 4(1). The home addresses, telephone numbers, and photographs of firefighters; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from c. 66 § 4(1). The home addresses and telephone numbers of justices of the Supreme Judicial Court, Appeals Court, Superior Courts, District Courts, Boston Municipal Court, Family and Probate Courts, Land Courts, Housing Courts, justices and judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from c. 66 § 4(1). The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from c. 66 § 4(1).

b. The home addresses and telephone numbers of general magistrates, special magistrates,

612 judges of compensation claims, administrative law judges of the Workmens Compensation  
613 Board, Massachusetts Commission Against Discrimination, and child support enforcement  
614 hearing officers; the home addresses, telephone numbers, and places of employment of the  
615 spouses and children of general magistrates, special magistrates, judges of compensation claims,  
616 administrative law judges of the Workmens Compensation Board, and child support enforcement  
617 hearing officers; and the names and locations of schools and day care facilities attended by the  
618 children of general magistrates, special magistrates, judges of compensation claims,  
619 administrative law judges of the Workmens Compensation Board, and child support enforcement  
620 hearing officers are exempt from c. 66 § 4(1) if the general magistrate, special magistrate, judge  
621 of compensation claims, administrative law judge of the Workmens Compensation Board, or  
622 child support hearing officer provides a written statement that the general magistrate, special  
623 magistrate, judge of compensation claims, administrative law judge of the Workmens  
624 Compensation Board, Massachusetts Commission of Discrimination, or child support hearing  
625 officer has made reasonable efforts to protect such information from being accessible through  
626 other means available to the public. This sub-subparagraph is subject to the Public Record Law  
627 in accordance with c. 66 § 16.

628 2. The home addresses, telephone numbers, and photographs of current or former human  
629 resource, labor relations, or employee relations directors, assistant directors, managers, or  
630 assistant managers of any local government agency or water management district whose duties  
631 include hiring and firing employees, labor contract negotiation, administration, or other  
632 personnel-related duties; the names, home addresses, telephone numbers, and places of  
633 employment of the spouses and children of such personnel; and the names and locations of



schools and day care facilities attended by the children of such personnel are exempt from c. 66 § 4(1).

3. The home addresses, telephone numbers, social security numbers, and photographs of current or former United States attorneys and assistant United States attorneys; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former United States attorneys and assistant United States attorneys; and the names and locations of schools and day care facilities attended by the children of current or former United States attorneys and assistant United States attorneys are exempt from c. 66 § 4(1). This subparagraph is subject to the Public Record Law in accordance with c. 66 §16. .

4. The home addresses, telephone numbers, social security numbers, and photographs of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges; and the names and locations of schools and day care facilities attended by the children of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges are exempt from c. 66 § 4(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Public Record Law in accordance with c. 66 § 16.

5. The home addresses, telephone numbers, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, and places of employment

of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from c. 66 § 4(1).

6. The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, and the names, home addresses, telephone numbers, and places of employment of the spouses and children of such persons, are exempt from c. 66 § 4(1), if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. This subparagraph is subject to the Public Record Law in accordance with s. 66 § 16.

7. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors; the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from c. 66 § 4(1). This subparagraph is subject to the Public Record Law in accordance with s. 66 § 16.

8. An agency that is the custodian of the personal information specified in subparagraph 1., subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., subparagraph 6., or subparagraph 7, and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1., subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., subparagraph 6., or subparagraph 7. shall maintain the exempt status of the

personal information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

(5) OTHER PERSONAL INFORMATION

(a)1.a. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

b. The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual.

c. The Legislature intends to monitor the use of social security numbers held by agencies in order to maintain a balanced public policy.

2.a. An agency may not collect an individual's social security number unless the agency has stated in writing the purpose for its collection and unless it is:

(I) Specifically authorized by law to do so; or

(II) Imperative for the performance of that agency's duties and responsibilities as prescribed by law.

b. Social security numbers collected by an agency may not be used by that agency for any purpose other than the purpose provided in the written statement.

3. An agency collecting an individual's social security number shall provide that individual with a copy of the written statement required in subparagraph 2.

4.a. Each agency shall review whether its collection of social security numbers is in compliance with subparagraph 2. If the agency determines that collection of a social security number is not in compliance with subparagraph 2., the agency shall immediately discontinue the collection of social security numbers for that purpose.

b. Each agency shall certify to the President of the Senate and the Speaker of the House of Representatives its compliance with this subparagraph no later than January 31, 2008.

5. Social security numbers held by an agency are confidential and exempt from c. 66 § 4(1). This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption.

6. Social security numbers may be disclosed to another agency or governmental entity if disclosure is necessary for the receiving agency or entity to perform its duties and responsibilities.

7.a. For purposes of this subsection, the term:

(I) "Commercial activity" means the provision of a lawful product or service by a commercial entity. Commercial activity includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use for insurance purposes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. It does not include the display or bulk sale of social security

719 numbers to the public or the distribution of such numbers to any customer that is not identifiable  
720 by the commercial entity.

721 (II) "Commercial entity" means any corporation, partnership, limited partnership, proprietorship,  
722 sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity  
723 in this state.

724 b. An agency may not deny a commercial entity engaged in the performance of a commercial  
725 activity access to social security numbers, provided the social security numbers will be used only  
726 in the performance of a commercial activity and provided the commercial entity makes a written  
727 request for the social security numbers. The written request must:

728 (I) Be verified

729 (a) Under oath or affirmation taken or administered before an officer authorized under s. [92.50](#)  
730 to administer oaths; or

731 (b) By the signing of the written declaration prescribed in subsection (2).

732 (2) A written declaration means the following statement: "Under penalties of perjury, I declare  
733 that I have read the foregoing [document] and that the facts stated in it are true," followed by the  
734 signature of the person making the declaration, except when a verification on information or  
735 belief is permitted by law, in which case the words "to the best of my knowledge and belief" may  
736 be added. The written declaration shall be printed or typed at the end of or immediately below  
737 the document being verified and above the signature of the person making the declaration.

738 (3) A person who knowingly makes a false declaration under subsection (2) is guilty of the  
739 crime of perjury by false written declaration, a felony of the third degree, punishable by law

740 (II) Be legibly signed by an authorized officer, employee, or agent of the commercial entity;

(III) Contain the commercial entity's name, business mailing and location addresses, and business telephone number; and

(IV) Contain a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity.

The aggregate of these requests shall serve as the basis for the agency report required in subparagraph 9.

c. An agency may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used.

8.a. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree punishable by law.

b. Any public officer who violates this paragraph commits a noncriminal infraction, punishable by a fine not exceeding \$500 per violation.

9.a. Every agency shall file a report with the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31 of each year.

b. The report required under sub-subparagraph a. shall list:

(I) The identity of all commercial entities that have requested social security numbers during the preceding calendar year; and

(II) The specific purpose or purposes stated by each commercial entity regarding its need for social security numbers.

c. If no disclosure requests were made, the agency shall so indicate.

10. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

11. This paragraph does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or created thereafter.

(b) Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from c. 66 § 4(1). This exemption applies to bank account numbers and debit, charge, and credit card numbers held by an agency before, on, or after the effective date of this exemption.

(c) Any information that would identify or help to locate a child who participates in government-sponsored recreation programs or camps or the parents or guardians of such child, including, but not limited to, the name, home address, telephone number, social security number, or photograph of the child; the names and locations of schools attended by such child; and the names, home addresses, and social security numbers of parents or guardians of such child is exempt from c. 66 § 4(1). Information made exempt pursuant to this paragraph may be disclosed by court order upon a showing of good cause. This exemption applies to records held before, on, or after the effective date of this exemption.

(d) All records supplied by a telecommunications company, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt from c. 66 § 4(1).

(e) Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, is exempt from c. 66 § 4(1).

(f) Medical history records and information related to health or property insurance provided to a state agency, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt from c. 66 § 4(1). Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

(g)1. Biometric identification information held by an agency before, on, or after the effective date of this exemption is exempt from c. 66 § 4(1). As used in this paragraph, the term "biometric identification information" means:

a. Any record of friction ridge detail;

b. Fingerprints;

c. Palm prints; and

d. Footprints.

2. This paragraph is subject to the Public Record Law in accordance with c. 66 § 16.

(h)1. Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt from c. 66 § 4(1).



2. This exemption applies to personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency before, on, or after the effective date of this exemption.

3. Confidential and exempt personal identifying information shall be disclosed:

a. With the express written consent of the individual or the individual's legally authorized representative;

b. In a medical emergency, but only to the extent that is necessary to protect the health or life of the individual;

c. By court order upon a showing of good cause; or

d. To another agency in the performance of its duties and responsibilities.

4. This paragraph is subject to the Public Record Law in accordance with c. 66 § 16.

#### **66 § 6 Executive branch agency exemptions from inspection or copying of public records**

When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain, all appraisals, other reports relating to value, offers, and counteroffers must be in writing and are exempt from c. 66 § 4(1) until execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. The agency shall not finally accept the offer for a period of 30 days in order to allow public review of the transaction. The agency may give conditional acceptance to any option or offer subject only to final acceptance by the agency after the 30-day review period. If a valid option contract is not executed, or if a written offer to sell is not conditionally accepted by the agency, then the exemption shall expire

at the conclusion of the condemnation litigation of the subject property. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from c. 66 § 4(1) to the same extent as appraisals, other reports relating to value, offers, and counteroffers. For the purpose of this subsection, the term "option contract" means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval. This subsection has no application to other exemptions from c. 66 § 4(1) which are contained in other provisions of law and shall not be construed to be an express or implied repeal thereof.

**66 § 7 Executive branch agency-specific exemptions from inspection or copying of public records**

**(1) DEPARTMENT OF HEALTH**

All personal identifying information contained in records relating to an individual's personal health or eligibility for health-related services held by the Department of Health is confidential and exempt from c. 66 § 4(1), except as otherwise provided in this subsection. Information made confidential and exempt by this subsection shall be disclosed:

(a) With the express written consent of the individual or the individual's legally authorized representative.

(b) In a medical emergency, but only to the extent necessary to protect the health or life of the individual.

(c) By court order upon a showing of good cause.

(d) To a health research entity, if the entity seeks the records or data pursuant to a research protocol approved by the department, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with c. 66 § 4(4). The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.

## (2) DEPARTMENT OF REGISTRY OF MOTOR VEHICLES

(a) Personal information contained in a motor vehicle record that identifies an individual is confidential and exempt from c. 66 § 4(1) except as provided in this subsection. Personal information includes, but is not limited to, an individual's social security number, driver identification number or identification card number, name, address, telephone number, medical or disability information, and emergency contact information. For purposes of this subsection, personal information does not include information relating to vehicular crashes, driving violations, and driver's status. For purposes of this subsection, the term "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Registry of Motor Vehicles.

(b) Personal information contained in motor vehicle records made confidential and exempt by this subsection may be released by the department for any of the following uses:

1. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers, to carry out the purposes of Titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. ss. 1231 et seq.), the Clean Air Act (42 U.S.C. ss. 7401 et seq.), and chapters 301, 305, and 321-331 of Title 49, United States Code.

2. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.

3. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.

4. For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

887 b. If such information as so submitted is not correct or is no longer correct, to obtain the correct  
888 information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or  
889 recovering on a debt or security interest against, the individual.

890 5. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any  
891 court or agency or before any self-regulatory body for:

892 a. Service of process by any certified process server, special process server, or other person  
893 authorized to serve process in this state.

894 b. Investigation in anticipation of litigation by an attorney licensed to practice law in this state or  
895 the agent of the attorney; however, the information may not be used for mass commercial  
896 solicitation of clients for litigation against motor vehicle dealers.

897 c. Investigation by any person in connection with any filed proceeding; however, the information  
898 may not be used for mass commercial solicitation of clients for litigation against motor vehicle  
899 dealers.

900 d. Execution or enforcement of judgments and orders.

901 e. Compliance with an order of any court.

902 6. For use in research activities and for use in producing statistical reports, so long as the  
903 personal information is not published, redisclosed, or used to contact individuals.

904 7. For use by any insurer or insurance support organization, or by a self-insured entity, or its  
905 agents, employees, or contractors, in connection with claims investigation activities, anti-fraud  
906 activities, rating, or underwriting.

907 8. For use in providing notice to the owners of towed or impounded vehicles.

908 9. For use by any licensed private investigative agency or licensed security service for any  
909 purpose permitted under this subsection. Personal information obtained based on an exempt  
910 driver's record may not be provided to a client who cannot demonstrate a need based on a police  
911 report, court order, or business or personal relationship with the subject of the investigation.

912 10. For use by an employer or its agent or insurer to obtain or verify information relating to a  
913 holder of a commercial driver's license that is required under 49 U.S.C. ss. 31301 et seq.

914 11. For use in connection with the operation of private toll transportation facilities.

915 12. For bulk distribution for surveys, marketing, or solicitations when the department has  
916 obtained the express consent of the person to whom such personal information pertains.

917 13. For any use if the requesting person demonstrates that he or she has obtained the written  
918 consent of the person who is the subject of the motor vehicle record.

919 14. For any other use specifically authorized by state law, if such use is related to the operation  
920 of a motor vehicle or public safety.

921 15. For any other use if the person to whom the information pertains has given express consent in  
922 a format prescribed by the department. Such consent shall remain in effect until it is revoked by  
923 the person on a form prescribed by the department.

924 (c) Notwithstanding paragraph (b), without the express consent of the person to whom such  
925 information applies, the following information contained in motor vehicle records may only be  
926 released as specified in this paragraph:

927 1. Social security numbers may be released only as provided in subparagraphs (b)2., 5., 7., and  
928 10.

929 2. An individual's photograph or image may be released only for state departmental  
930 administrative purposes; for the issuance of duplicate licenses; in response to law enforcement  
931 agency requests; to the Registry of Motor Vehicles pursuant to an interagency agreement to  
932 facilitate determinations of eligibility of voter registration applicants and registered voters in  
933 accordance; to the Department of Revenue pursuant to an interagency agreement for use in  
934 establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D  
935 cases; to the Department of Social Services pursuant to an interagency agreement to conduct  
936 protective investigations; or to the Office of the State Treasurer, pursuant to an interagency  
937 agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed  
938 property claims, and the identification of fraudulent or false claims.

939 3. Medical disability information is exempt from disclosure.

940 4. Emergency contact information may be released only to law enforcement agencies for  
941 purposes of contacting those listed in the event of an emergency.

942 (d) The restrictions on disclosure of personal information provided by this subsection shall not in  
943 any way affect the use of organ donation information on individual driver licenses or affect the  
944 administration of organ donation initiatives in this state.

945 (e)1. Personal information made confidential and exempt may be disclosed by the Department of  
946 Highway Safety and Motor Vehicles to an individual, firm, corporation, or similar business  
947 entity whose primary business interest is to resell or redisclose the personal information to  
948 persons who are authorized to receive such information. Prior to the department's disclosure of

personal information, such individual, firm, corporation, or similar business entity must first enter into a contract with the department regarding the care, custody, and control of the personal information to ensure compliance with the federal Driver's Privacy Protection Act of 1994 and applicable state laws.

2. An authorized recipient of personal information contained in a motor vehicle record, except a recipient under subparagraph (b)12., may contract with the Department of Highway Safety and Motor Vehicles to resell or redisclose the information for any use permitted under this section. However, only authorized recipients of personal information under subparagraph (b)12 may resell or redisclose personal information pursuant to subparagraph (b)12.

3. Any authorized recipient who resells or rediscloses personal information shall maintain, for a period of 5 years, records identifying each person or entity that receives the personal information and the permitted purpose for which it will be used. Such records shall be made available for inspection upon request by the department.

(f) The department may adopt rules to carry out the purposes of this subsection and the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Rules adopted by the department may provide for the payment of applicable fees and, prior to the disclosure of personal information pursuant to this subsection, may require the meeting of conditions by the requesting person for the purposes of obtaining reasonable assurance concerning the identity of such requesting person, and, to the extent required, assurance that the use will be only as authorized or that the consent of the person who is the subject of the personal information has been obtained. Such conditions may include, but need not be limited to, the making and filing of



970 a written application in such form and containing such information and certification requirements  
971 as the department requires.

972 (g) This subsection is subject to the Public Record Law in accordance with c. 66 § 16.

973 **66 § 8 Local government agency exemptions from inspection or copying of public records**

974 (1) All complaints and other records in the custody of any unit of local government which relate  
975 to a complaint of discrimination relating to race, color, religion, sex, national origin, age,  
976 handicap, marital status, sale or rental of housing, the provision of brokerage services, or the  
977 financing of housing are exempt from c. 66 § 4(1) until a finding is made relating to probable  
978 cause, the investigation of the complaint becomes inactive, or the complaint or other record is  
979 made part of the official record of any hearing or court proceeding. This provision shall not  
980 affect any function or activity of any state or federal agency that is authorized to have access to  
981 such complaints or records by any provision of law shall be granted such access in the  
982 furtherance of such agency's statutory duties. This subsection shall not be construed to modify or  
983 repeal any special or local act.

984 (2) The audit report of an internal auditor prepared for or on behalf of a unit of local government  
985 becomes a public record when the audit becomes final. As used in this subsection, the term "unit  
986 of local government" means a county, municipality, special district, local agency, authority,  
987 consolidated city-county government, or any other local governmental body or public body  
988 corporate or politic authorized or created by general or special law. An audit becomes final when  
989 the audit report is presented to the unit of local government. Audit workpapers and notes related  
990 to such audit report are confidential and exempt from c. 66 § 4(1) until the audit is completed  
991 and the audit report becomes final.

(3) Any data, record, or document used directly or solely by a municipally owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt from c. 66 § 4(1). This exemption commences when a municipal utility identifies in writing a specific bid to which it intends to respond. This exemption no longer applies when the contract for sale, distribution, or use of the service, commodity, or tangible personal property is executed, a decision is made not to execute such contract, or the project is no longer under active consideration. The exemption in this subsection includes the bid documents actually furnished in response to the request for bids. However, the exemption for the bid documents submitted no longer applies after the bids are opened by the customer or prospective customer.

## **66 § 9 Court files; court records; official records**

### **(1) COURT FILES**

Nothing in this chapter shall be construed to exempt from c. 66 § 4(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(a) A public record that was prepared by an agency attorney or prepared at the attorney's express direction as provided in c. 66 § 5(1)(d).

(b) Data processing software as provided in c. 66 § 5(1)(f).

(c) Any information revealing surveillance techniques or procedures or personnel as provided in c. 66 § 5(2)(d).

1011 (d) Any comprehensive inventory of state and local law enforcement resources, and any  
1012 comprehensive policies or plans compiled by a criminal justice agency, as provided in c. 66 §  
1013 5(2)(d).

1014 (e) Any information revealing the substance of a confession of a person arrested as provided in c.  
1015 66 § 5(2)(e).

1016 (f) Any information revealing the identity of a confidential informant or confidential source as  
1017 provided in c. 66 § 5(2)(f).

1018 (g) Any information revealing undercover personnel of any criminal justice agency as provided  
1019 in c. 66 § 5(4)(c).

1020 (h) Criminal intelligence information or criminal investigative information that is confidential  
1021 and exempt as provided in c. 66 § 5(2)(h).

1022 (i) Social security numbers as provided in c. 66 § 5(5)(a).

1023 (j) Bank account numbers and debit, charge, and credit card numbers as provided in c. 66 §  
1024 5(5)(b).

1025 (2) COURT RECORDS

1026 (a) Until January 1, 2011, if a social security number or a bank account, debit, charge, or credit  
1027 card number is included in a court file, such number may be included as part of the court record  
1028 available for public inspection and copying unless redaction is requested by the holder of such  
1029 number or by the holder's attorney or legal guardian.

1030 (b) A request for redaction must be a signed, legibly written request specifying the case name,  
1031 case number, document heading, and page number. The request must be delivered by mail,  
1032 facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court  
1033 does not have a duty to inquire beyond the written request to verify the identity of a person  
1034 requesting redaction.

1035 (c) A fee may not be charged for the redaction of a social security number or a bank account,  
1036 debit, charge, or credit card number pursuant to such request.

1037 (d) The clerk of the court has no liability for the inadvertent release of social security numbers,  
1038 or bank account, debit, charge, or credit card numbers, unknown to the clerk of the court in court  
1039 records filed on or before January 1, 2011.

1040 (e)1. On January 1, 2011, and thereafter, the clerk of the court must keep social security numbers  
1041 confidential and exempt as provided for in c. 66 § 5(5)(a), and bank account, debit, charge, and  
1042 credit card numbers exempt as provided for in c. 66 § 5(5)(b), without any person having to  
1043 request redaction.

1044 2. Section 66 § 5(5)(a)7 and 8 does not apply to the clerks of the court with respect to court  
1045 records.

### 1046 (3) OFFICIAL RECORDS

1047 (a) Any person who prepares or files a record for recording in the official records may not  
1048 include in that record a social security number or a bank account, debit, charge, or credit card  
1049 number unless otherwise expressly required by law.

(b)1. If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

2. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (h), to keep social security numbers confidential and exempt as provided for in c. 66 § 5(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in c. 66 § 5(5)(b), without any person having to request redaction.

3. Section 66 § 5(5)(a)7 and 8 does not apply to the county recorder with respect to official records.

(c) The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

(d) A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.

(e) The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

(f) A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.

(g) A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.

2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

(h) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an

automated program for redaction shall be deemed to be the best effort in performing the redaction and shall be deemed in compliance with the requirements of this subsection.

(i) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

**66 § 10 Copyright of data processing software created by governmental agencies; sale price and licensing fee**

(1) As used in this section, "agency" has the same meaning as in c. 66 § 2(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(2) An agency is authorized to acquire and hold a copyright for data processing software created by the agency and to enforce its rights pertaining to such copyright, provided that the agency complies with the requirements of this subsection.

(a) An agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of such data processing software that may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to c. 66 § 4(4).

(b) Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency's appropriate use for authorized

purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used.

(c) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

#### **66 § 11 Registration by federal employer's registration number**

Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

#### **66 § 12 Violation of chapter; penalties**

(1) Any public officer who:

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Knowingly violates the provisions of c. 66 § 4(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable by law.



(2) Any person who willfully and knowingly violates:

(a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable by law.

(b) Section 66 § 13 commits a felony of the third degree, punishable by law.

**66 § 13 Protection of victims of crimes or accidents**

Police reports are public records except as otherwise made exempt or confidential. Every person is allowed to examine nonexempt or nonconfidential police reports. A person who comes into possession of exempt or confidential information contained in police reports may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. This section does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information.

**66 § 14 Accelerated hearing; immediate compliance**

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by

the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.

(3) A stay order shall not be issued unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.

(4) Upon service of a complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of this chapter, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption or the assertion that the requested record is not a public record subject to inspection and examination under c. 66 § 4(1), until the court directs otherwise. The person who has custody of such public record may, however, at any time permit inspection of the requested record as provided in c. 66 § 4(1) and other provisions of law.

#### **66 § 15 Attorney's fees**

If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

#### **66 § 16 Legislative review of exemptions from public meeting and public records requirements**

(1) This section may be cited as the "Public Record Law."

1174 (2) This section provides for the review and repeal or reenactment of an exemption from c. 66 §  
1175 4(1). This act does not apply to an exemption that:

1176 (a) Is required by federal law; or

1177 (b) Applies solely to the Legislature or the State Court System.

1178 (3) In the 5th year after enactment of a new exemption or substantial amendment of an existing  
1179 exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the  
1180 Legislature acts to reenact the exemption.

1181 (4)(a) A law that enacts a new exemption or substantially amends an existing exemption must  
1182 state that the record or meeting is:

1183 1. Exempt from the State Constitution;

1184 2. Exempt from c. 66 § 4(1); and

1185 3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature  
1186 before the scheduled repeal date.

1187 (b) For purposes of this section, an exemption is substantially amended if the amendment  
1188 expands the scope of the exemption to include more records or information or to include  
1189 meetings as well as records. An exemption is not substantially amended if the amendment  
1190 narrows the scope of the exemption.

1191 (c) This section is not intended to repeal an exemption that has been amended following  
1192 legislative review before the scheduled repeal of the exemption if the exemption is not  
1193 substantially amended as a result of the review.

1194 (5)(a) As part of the review process, the Legislature shall consider the following:

1195 1. What specific records or meetings are affected by the exemption?

1196 2. Whom does the exemption uniquely affect, as opposed to the general public?

1197 3. What is the identifiable public purpose or goal of the exemption?

1198 4. Can the information contained in the records or discussed in the meeting be readily obtained  
1199 by alternative means? If so, how?

1200 5. Is the record or meeting protected by another exemption?

1201 6. Are there multiple exemptions for the same type of record or meeting that it would be  
1202 appropriate to merge?

1203 (b) An exemption may be created, revised, or maintained only if it serves an identifiable public  
1204 purpose, and the exemption may be no broader than is necessary to meet the public purpose it  
1205 serves. An identifiable public purpose is served if the exemption meets one of the following  
1206 purposes and the Legislature finds that the purpose is sufficiently compelling to override the  
1207 strong public policy of open government and cannot be accomplished without the exemption:

1208 1. Allows the state or its political subdivisions to effectively and efficiently administer a  
1209 governmental program, which administration would be significantly impaired without the  
1210 exemption;

1211 2. Protects information of a sensitive personal nature concerning individuals, the release of  
1212 which information would be defamatory to such individuals or cause unwarranted damage to the  
1213 good name or reputation of such individuals or would jeopardize the safety of such individuals.

1214 However, in exemptions under this subparagraph, only information that would identify the  
1215 individuals may be exempted; or

1216 3. Protects information of a confidential nature concerning entities, including, but not limited to,  
1217 a formula, pattern, device, combination of devices, or compilation of information which is used  
1218 to protect or further a business advantage over those who do not know or use it, the disclosure of  
1219 which information would injure the affected entity in the marketplace.

1220 (6) Records made before the date of a repeal of an exemption under this section may not be made  
1221 public unless otherwise provided by law. In deciding whether the records shall be made public,  
1222 the Legislature shall consider whether the damage or loss to persons or entities uniquely affected  
1223 by the exemption of the type specified in subparagraph (6)(b)2.or subparagraph (6)(b)3 would  
1224 occur if the records were made public.

1225 (7) Notwithstanding any other law, neither the state or its political subdivisions nor any other  
1226 public body shall be made party to any suit in any court or incur any liability for the repeal or  
1227 revival and reenactment of an exemption under this section. The failure of the Legislature to  
1228 comply strictly with this section does not invalidate an otherwise valid reenactment.